

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Alina T. Hudak, City Manager
DATE: September 27, 2023

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2023-479-KB FOR THE MANAGEMENT AND OPERATION OF A HIGH-END BEACH ESTABLISHMENT.

RECOMMENDATION

On May 17, 2023, the City Commission directed the Administration to prepare and issue a Request for Proposals (RFP) for the management or operation of a high-end beach establishment and ancillary uses at One Ocean Drive and adjacent concession area, with the new agreement(s) taking effect after the expiration of the existing lease and concession agreements on May 6, 2026. The RFP allowed bidders to submit proposals for up to two independent proposal alternates that are independent of each other - Option 1 for an agreement having a term of less than 10 years and Option 2 for an agreement having a term of up to 30 years.

After concluding a thorough review of the facts of this procurement, the results of the evaluation committee process, the financial analysis of the 10-year option versus the 30-year option, and the best interests of the City with regard to the property, it is recommended that the Mayor and City Commission select Option 1 and authorize the Administration to negotiate with Boucher Brothers, the unanimous top-ranked bidder for Option 1. The final agreement shall be subject to prior City Commission approval.

This solicitation remains under the cone of silence until the RFP is awarded by the City Commission.

BACKGROUND/HISTORY

On October 2, 1985, the Mayor and City Commission adopted Resolution No. 85-18223, approving a Lease between the City and Penrod Brothers, Inc. ("Penrod"), dated November 7, 1985 (the "Penrod Lease"), as amended by Amendments No. 1-3 thereof, for the development, construction, management and operation of a restaurant facility at One Ocean Drive (the "Beach Club"). The Penrod Lease had an initial term of 20 years, with two (2) 10-year renewal terms, and is currently set to expire on May 6, 2026.

On October 2, 1985, the Mayor and City Commission also adopted Resolution No. 85-18222, approving a Concession Agreement, dated November 7, 1985, between the City and Penrod for the rental of beach equipment, water recreation equipment, and food and beverage service at various locations in the vicinity of the leased property (the "Concession Area", and together with the Beach Club, the "Property"), which said Agreement was amended several times until its expiration in 2003. On February 25, 2004, the Mayor and City Commission executed a new Concession Agreement by and between the City and Penrod Brothers, Inc., for the management and operation of a concession in the portion of Pier Park seaward of the footprint of the Penrod's Restaurant, located at One Ocean Drive, Miami Beach, Florida (the "Penrod Concession Agreement"). The Penrod Concession Agreement is similarly set to expire on May 6, 2026.

On May 17, 2023, pursuant to Resolution 2023-32612, the City Commission directed the Administration to prepare and issue a Request for Proposals (RFP) for the management and operation of a high-end beach establishment and ancillary uses on the Property and adjacent concession area, with the new agreements taking effect after the expiration of the existing Penrod Lease and Penrod Concession Agreements on May 6, 2026. Accordingly, a Request for Proposals (RFP) was developed to seek proposals from firms interested in being considered to negotiate an agreement with the City for the management and operation of a high-end beach establishment and ancillary uses on the Property and adjacent concession area, the details and requirements of which were delineated in the RFP.

Resolution No. 2023-32612 specifically directed the Administration to allow proposers to submit up to two (2) independent proposal alternates. In order to provide guidance to proposers, and to allow for the evaluation and review of comparable proposals, the RFP specified that each Bidder had the option to submit one (1) proposal for Option 1 (Agreement having a term of less than 10 years) and one (1) proposal in for Option 2 (Agreement having a term equal to or greater than 10 years but not more than 30 years, including options, in accordance with Resolution No. 2023-32612). To encourage creativity, the RFP contemplated that Bidders could offer alternative concepts or approaches for the use of the Property in respect of Option 1 and Option 2, as well as alternative financial and other terms for a lease, concession agreement, or management agreement in respect of the Property and the Concession Area. In all cases, any proposed agreement between the City and a Bidder that includes the beachfront to the rear of the existing Beach Club must be in the form of a concession agreement.

ANALYSIS

On June 13, 2023, RFP 2023-479-KB for the management and operation of a high-end beach establishment was issued. A mandatory pre-proposal conference to provide information to proposers submitting a response was held on June 28, 2023, and July 12, 2023. A site visit was held on July 12, 2023. Eight (8) addenda were issued, and 83 prospective bidders accessed the advertised solicitation. On July 31, 2023, and August 15, 2023, the City received two (2) protests challenging the specifications included in the RFP. Both protests were responded to on August 4, 2023, and August 18, 2023, respectively, and as a result, the RFP due date was extended by 16 days. RFP responses were due and received on August 31, 2023. The City received proposals from the following firms for Options 1 and 2¹:

Option 1:

- Boucher Brothers Management, Inc.
- Tao Group Hospitality/One Ocean Hospitality LLC
- The Group US Management LLC

Option 2:

- Boucher Brothers Management, Inc.
- RH
- Tao Group Hospitality/One Ocean Hospitality LLC
- The Group US Management LLC

All the proposals received satisfied the qualifications requirements established in the RFP, with each Bidder team demonstrating at least five (5) years of experience (within the last 10 years) in managing or operating a beach establishment, beach concession, or a similar operation.

On July 13, 2023, the Evaluation Committee was appointed via LTC # 316-2023. The Evaluation Committee convened on September 11, 2023, to consider the proposal received. The Committee was comprised of Hernan Cardeno, Director, Code Compliance Department; Jose Del Risco, Assistant Director, Parks and Recreation Department; Jason Greene, Chief Financial Officer, Finance Department; Keith Marks, President, South of Fifth Neighborhood Association (SOFNA); Elizabeth Miro, Interim Director, Facilities and Fleet Management Department.

The Committee was provided an overview of the project, information relative to the City's Cone of Silence Ordinance, and the Florida Sunshine Law. The Committee was also provided with general information on the scope of services and a copy of each proposal. The Committee was instructed to score and rank each proposal pursuant to the evaluation criteria established in the RFP. The results

of the evaluation process are included in Attachment A and summarized below.

OPTION 1

The proposal submitted by Boucher Brothers for Option 1 was the unanimously top-ranked proposal by the Evaluation Committee. In fact, the Evaluation Committee unanimously ranked all proposals for Option 1, with The Group US Management LLC and Tao Group Hospitality unanimously ranked as the second and third-ranked proposals, respectively. Attachment B provides a high-level comparison of the three (3) proposals.

In scoring proposals, the Evaluation Committee emphasized Boucher Brothers' qualifications, public benefits, and financial proposal. Boucher Brothers has over 20 years of experience in Miami Beach and Ft. Lauderdale managing and operating beach establishments or concessions. For food and beverage operations, Boucher Brothers has teamed with Major Food Group LLC, which has experience with high-end food establishments. The Boucher Brothers' proposal also includes a childcare center operated by Itavi, where parents can drop off their children for supervised activities. Itavi provides childcare services to various hotels and properties, including Fontainebleau Miami Beach, Eden Roc, W South Beach, One Hotel, Acqualina Resorts, Saint Regis Bal Harbour, and the Biltmore Hotel. The team also includes architecture and landscape designs by Kobi Karp and Raymond Jungles. The proposed public benefits include a police sub-station, resident discounts, and other benefits highlighted in Attachment B. Boucher Brothers has proposed a rent of 10% of gross operating revenue with a minimum annual guarantee of \$4 million that escalates annually at 3% beginning in year 2. It is estimated that the minimum rent yield to the City would be approximately \$41 million over the 10-year term for Option 1.² Additionally, Boucher Brother proposes an estimated cost of improvements to the Property, which includes major renovations, in the amount of \$26,226,920. The proposal submitted by Boucher Brothers for Option 1 is included as Attachment C.

OPTION 2

The Evaluation Committee process resulted in a tie between the proposals submitted by Boucher Brothers and The Group US Management, with Tao Hospitality and RH, being unanimously ranked as third and fourth, respectively. A high-level comparison of certain aspects of the proposals submitted by Boucher and The Group US Management for Option 2 is attached as Attachment D.

As was the case in Option 1, the Evaluation Committee emphasized Boucher Brothers' qualifications, public benefits, and financial proposal for Option 2, including the experience of the team, the public benefits of enhanced security and resident discounts, as well as the proposed revenue to the City. The programming and design portions of the proposal submitted by Boucher Brothers for Option 2 is the same as its Option 1 proposal with the difference being in the financial proposal. See Attachments D and E. As revenue to the City, Boucher Brothers is again proposing 10% of gross operating revenue with a minimum annual guarantee of \$4 million that escalates annually at 3% beginning in year 2. It is estimated that the minimum rent yield would be approximately \$190 million over the 30-year term for Option 2.³ Additionally, Boucher Brother proposes improvements to the Property that are estimated to cost \$26,226,920.

For the proposal submitted by The Group US Management, the Evaluation Committee emphasized the programming options and design proposed, which includes a new building that incorporates a 120-seat performance venue for live performances and community events, a lagoon area, and arts and exhibitions spaces. The Group US Management's major food and beverage partner is Casa Reia.

The Group has proposed a rent of \$3 million annually (after an initial period of rent abatement) with a 10% escalation every five (5) years with no percentage of rent as revenue to the City. It is estimated that the minimum rent yield to the City would be \$115 million over the 30-year term for Option 2.⁴ Additionally, The Group US Management proposes an estimated cost of improvements to the Property, which includes a new building, in the amount of \$36,000,000. The proposal submitted by The Group US Management for Option 2 is attached hereto as Attachment F.

ANALYSIS OF OPTION 1 VERSUS OPTION 2

The top-ranked proposal for Option 1, proposed by Boucher Brothers, Inc., and the tied top-ranked proposals for Option 2, proposed by Boucher Brothers, Inc. and The Group US Management would all replace the current facility with multi-amenity beach clubs that offer various restaurant choices, retail, lounge areas and beach concession amenities. While there are some differences in the programming proposed by Boucher Brothers, Inc. and The Group US Management, the main differences between the proposal for Option 1 and the proposals for Option 2 are the length of time of the agreement and the financial consideration of the proposals. In addition to the qualifications, proposed programs, and public benefits, the following factors have contributed to the recommendation for the award recommendation included herein.

- Boucher Brothers has committed to making an investment of approximately \$26 million to transform the current facility for both options. For Option 2, The Group US Management has committed \$36 million to demolish the current facility and construct a new facility. While Boucher Brothers is proposing an initial lower investment, a \$26 million investment of the current facility should yield a *like-new* facility for the near 10-year term of Option 1.
- Boucher Brothers is proposing 10 percent (%) of gross revenue to the City as rent with a \$41 million minimum annual guarantee for Option 1 and \$190 million minimum guarantee for Option 2. For Option 2, The Group US Management is proposing \$115 million for Option 2. When the net present value (applying a 5% discount rate) is considered, the net present value of Boucher Brother's Option 1 is \$30 million, whereas the net present value of The Group US Management proposal for Option 2 is only \$45 million. The additional value proposed by The Group US Management for Option 2 does not warrant tying up the property for 30 years as one would expect a more significant difference between the net present value of Option 1 and Option 2.
- A significant portion of both proposals include specific brands for proposed food and beverage outlets. Considering that most restaurants have relatively short life spans as trends change, it may not be prudent to tie up the facility with a 30-year agreement for a specific brand. Further, should the public's taste change or a future city commission determine a better use for the Property, a 10-year option would provide flexibility for other uses of the Property.

FORM OF AGREEMENT

The Property is currently operated pursuant to a lease agreement governing a portion of the Property and a concession agreement governing the remainder of the Property. Ultimately, whether to pursue a lease or a concession agreement (or both) is for each Proposer to negotiate with the City. It is important to note that the purpose of this item is to seek authorization to negotiate with the selected proposer, either for Option 1 or Option 2. Final agreement details, such as the form of agreement (i.e., lease versus concession agreement), final programming, investments, etc., will be finalized through negotiations. After negotiations have concluded and further due diligence has been conducted, the final agreement will require approval by the City Commission.

As previously noted, the form of agreement to be entered into with the successful proposer will be determined during the negotiations authorized by the City Commission. In determining the form of agreement and length of the term, the following considerations are important:

- A management or concession agreement having a term of less than ten (10) years will require approval of a 4/7th vote of the City Commission.
- A management or concession agreement having a term of ten (10) years or longer (including option periods) will require approval by a 4/7th vote of the Planning Board and a 6/7th vote of the City Commission (Section 1.03(f) of the City Charter).
- A lease of the Property for a term of less than ten (10) years will require (a) transmission by the City Manager to the Finance and Economic Resiliency Committee for its review (Section 82-37(b)(1) of the City Code); (b) one reading of the title by the City Commission accompanied by a public hearing (Section 82-37(b)(2) of the City Code); and (c) approval by a majority of the residents residing in voting precincts any part of which is within 1 mile of the boundaries of the Property (Section 7-02 of the Miami-Dade County Charter).
- A lease of the Property for a term of ten (10) years or longer will require (a) transmission by the City Manager to the Finance and Economic Resiliency Committee for its review (Section 82-37(a)(1) of the City Code); (b) two readings of the title by the City Commission, with the second reading to be accompanied by a public hearing (Section 82-37(a)(2) of the City Code); (c) approval by a majority vote of the voters in a city-wide referendum (Section 1.03(b)(1) of the City Charter); and (d) approval by a majority of the residents residing in voting precincts any part of which is within 1 mile of the boundaries of the Property (Section 7-02 of the Miami-Dade County Charter).

SUPPORTING SURVEY DATA

Not applicable.

FINANCIAL INFORMATION

Financial information for each of the recommended proposals for Option 1 and Option 2 is included in the Analysis section above.

CONCLUSION

Based on the foregoing, it is recommended that the Mayor and City Commission of the City of Miami Beach, Florida, approve the Resolution accepting the recommendation of the City Manager, pursuant to RFP No. 2023-479-KB, for the management and operation of a high-end beach establishment at the Property, to award Option 1 to Boucher Brothers, the unanimous top-ranked proposer for this option, and authorizing the Administration to negotiate an agreement with Boucher Brothers, Inc. The final agreement shall be subject to prior City Commission approval.

Endnotes:

¹Penrod Brothers, Inc. (“Penrod”) submitted a proposal that failed to comply with the RFP’s express requirements for submission. This submission was made after the 3:00:00 p.m. deadline on August 31, 2023 and was received in hard copy and via email file-share – not through Periscope, as required by the RFP. Penrod subsequently submitted a bid protest contending that it did timely submit its proposal or, alternatively, that it should have been granted an extension because one of its lawyers was based in Tallahassee and was affected by Hurricane Idalia. Notably, however, Persicope reflects Penrod’s representative’s activities uploading documents as early as 7:59 a.m. on August 31st, as well as activity continuing up to and including 2:59:44 p.m. The bid protest alternatively requested that the City waive the RFP’s fixed 3:00:00 p.m. submittal deadline as a “minor and non-material timing issue.” The City denied this bid protest based, among other things, on the plain and unambiguous terms of RFP Section 0100, Paragraph 6 (“Deadline for Proposal Submittal”). Penrod has challenged the City’s denial of the protest in the action styled Penrod Brothers, Inc. v. The City of Miami Beach, Florida, Case No. 1:23-CV-23362-JEM (S.D. Fla).

²For Option 1, applying a 5% discount rate, the net present value of this income stream from Boucher Brothers is approximately \$30 million.

³Applying a 5% discount rate, the net present value of this income stream from Boucher Brothers (Option 2) is approximately \$72.5 million.

⁴Applying a 5% discount rate, the net present value of this income stream from The Group (Option 2) is approximately \$45 million.

Applicable Area

South Beach

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?

Yes

Does this item utilize G.O. Bond Funds?

No

Legislative Tracking

Facilities and Fleet Management/Procurement

ATTACHMENTS:

Description

- Attachment A
- Attachment B
- Attachment D
- Link to Attachments C, E, and F